

until proof of performance tests have been conducted on such segment (or, in the case of the entire System, on all segments of the cable System) and any problems found during testing have been corrected. The term "activation" shall not include marketing and the installation of Subscriber Service.

C. Reconstruction Requirements

1. The Franchisee required to reconstruct its system in compliance with this franchise shall design the system capable of being upgraded to a 450 MHz system. Spacing for amplifiers and related electronic equipment shall be designed and constructed to accommodate 450 MHz equipment.
2. As part of the construction sequence plan required in Section II. B. hereof, the Franchisee shall prepare a cut over plan indicating the sequence in which subscribers will be disconnected from the old system plant and reconnected to the new system plant. The time subscribers are without service should be minimal. The Franchisee shall provide credit to any subscriber who is without service for more than one day of prime time viewing.

II. CONSTRUCTION SCHEDULE AND SEQUENCE

A. Construction Schedule

1. The Franchisee shall file a construction plan acceptable to the Department within 6 months from the effective date of the franchise, unless the filing date is extended by the Board which may be appealed to the Council. The plan shall delineate a schedule of the mileage and/or time frame for design, execution of pole attachment agreements, underground construction permits, make ready engineering, make ready construction, strand, underground conduit and cable installation, splicing and plant activation for the rebuild construction. For system upgrades, including converter change outs, similar information appropriate to the form of the upgrade shall be delineated.
2. Activation Milestones. The Franchisee shall develop an activation milestone schedule in quarter year increments based upon the construction plan required by the foregoing Section II.A.1. The initial version of the milestone schedule, and any modification to said initial milestone schedule shall, upon its approval by the Board, be set forth as Exhibit 1 to this Appendix E, which Exhibit shall be incorporated herein and made a part of this Appendix B and the franchise Agreement. The Franchisee shall complete and activate the entire system throughout the Franchise Area by no later than the date specified in Exhibit 1.

3. Liquidated Damages. It would be impractical and extremely difficult to determine the damages which would be incurred by the general public residing in the Franchise Area by not having available the Services proposed by the Construction of the System in accordance with the construction plan, activation milestone schedule and construction sequence plan required pursuant to Section 4.14 and Appendix B herein. Therefore, liquidated damages of \$1,000.00 per day, every calendar day, will be assessed for failure to meet the final completion and activation date as indicated in Exhibit 1 to this Appendix B. Liquidated damages shall accrue irrespective of any modifications to the scheduling in Exhibit 1 approved by the Board, unless the Board finds that such modifications are warranted as a result of force majeure or unreasonable delays caused by the Department of Water and Power, General Telephone Company or Pacific Telephone Company or other unforeseen or unavoidable factors that may arise that are beyond the control of the Company and which could not have been prevented. Determinations by the Board may be appealed to the Council.
4. Construction of the System shall be considered completed when the Company has notified the Department, in writing, that the Franchisee has (i) installed all cables and associated equipment and system devices, excluding converters, necessary for Subscribers to receive Services distributed over the System; (ii) passed all initial proof-of-performance tests, as provided in Appendix A to this Agreement; and (iii) commenced the offering and distribution of the full range of Services throughout the Franchise Area. The temporary exception area or other abatement of the Company's service obligations pursuant to Sections 4.3 and 5 of this Agreement shall not prevent the issuance by the Department of either of the foregoing written acknowledgements of completion and such acknowledgements may be issued subject to any such abatements. The plan shall consist of a map of the entire Franchise Area and shall clearly delineate the following:
 - (i) The areas within the Franchise Area where the cable System will be initially available to subscribers, including a schedule of Construction as proposed; and
 - (ii) Areas within the Franchise Area where extensions of the cable System cannot reasonably be done due to the lack of present or planned development or other similar reasons, with the areas and the reasons for not serving them clearly identified on the map.

B. Construction Sequence

1. In addition to the construction plan and milestone schedule, the Franchisee shall file an acceptable construction sequence plan within 6 months of the effective date of this franchise. This plan shall delineate the sequence of the construction or upgrade within the Franchise Area. The sequence areas should be designated using street names as boundaries.
2. The Franchisee shall not materially deviate from the initial plan for the sequence of Construction without the prior approval of the Department provided that the Franchisee shall provide to the Department a written explanation and justification for deviations from the approved initial sequence plan.
3. The initial version of, and any modification to, the construction sequence plan shall, upon its approval by the Department, be set forth as Exhibit 2 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and this Agreement.
4. Actual physical Construction may not commence prior to the submission of the construction plan (II.A.1.), activation milestone schedule (II.A.2.) and construction sequence plan (II.B.1.).
5. Special agreements. Nothing in this section shall be construed to prevent the Franchisee from serving areas not covered by this section upon an agreement with developers, property owners, or residents.

**BUILD SCHEDULE FOR
FRANCHISE AREA D - OVS**

APPENDIX B

SYSTEM CONSTRUCTION PLAN AND CONSTRUCTION SCHEDULES

I. CONSTRUCTION TERMS

A. Location of Cable

1. Franchisee shall install all cables in a manner consistent with existing telephone or public utility lines. Where both such lines or other System Facilities are underground at a particular location (other than on private property), Franchisee shall install its cables underground, except as otherwise provided in Chapter 4 of this Franchise Agreement and this Appendix B or as otherwise approved by the agencies of the City having jurisdiction over such matters. Where either of such lines or other System Facilities are above ground at a particular location, Franchisee may elect to install its cables above ground.
2. Franchisee shall use existing utility or Cable Services operator controlled poles, ducts or conduits for the installation of cable, except as provided in Subsection 4.20.01 of this Franchise Agreement. All poles placed by Franchisee shall be tagged in the manner required by the appropriate governing entity

B. Specific Terms

1. As provided in this Franchise Agreement, Franchisee shall comply with all applicable City laws, rules, regulations, codes, and other requirements in connection with the Construction of the System.
2. The installation of all cables, wires, or other component parts of the System in any structure shall be undertaken in a manner which does not interfere with the operation of any existing MATV, SMATV, MDS, DBS, or other distribution system in said structure, including any conduit used in connection with any other system. For the purpose of routine maintenance, repair, connection, installation, or disconnection, all System wiring in any structure shall be accessible from a public hallway, roof, basement, stairwell, or other public area in said structure.
3. Franchisee shall construct the System so as to meet the all Service obligations set forth in this Franchise Agreement. In the event that Franchisee encounters extraordinary circumstances in connection with the Construction or operation of the System, Franchisee may, pursuant to Section 4.3 of this Franchise Agreement, apply to the Agency for appropriate relief. To the extent possible, said relief shall be in the form of a temporary exception of the service obligation of Franchisee until said

circumstances cease. For purposes of this Section "extraordinary circumstances" means that the Agency has made a finding that, at a minimum, there exists:

- (1) vacant or abandoned buildings;
- (2) inability of Franchisee to obtain access (physical or constructive) to a structure;
- (3) situations which substantially and adversely affect the economic viability of the System; or
- (4) such other conditions regarding which the Agency and Franchisee may from time to time reach agreement

In considering a petition for relief under this Section, the Agency shall attempt, in any determination, to limit such relief to the smallest geographical unit practicable, consistent with the intent of this Section: (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any portion of the Franchise Area.

C. System Construction Requirements

1. The phrases, "complete Construction," "Construction completion," or derivative phrases, when used with respect to the "Phased Construction Areas" and "segments" of such Phased Construction Areas in which Franchisee intends to offer Service, or when used with respect to the entire System, shall mean that Franchisee has accomplished the following:
 - (1) For aerial Construction, put up all necessary strand and lashed all necessary cable (including trunk and feeder cable);
 - (2) For underground Construction, laid all cable in conduit and refilled all trenches, restored all road surfaces, and, except where prevented by weather conditions or delayed because of seasons, restored all landscaping;
 - (3) Installed all service node components, amplifier housings and modules, or their equivalents (including the modules for return path Signals);
 - (4) Installed all power supplies, and completed all related bonding and grounding;
 - (5) Installed all necessary connectors, splitters, and taps;

- (6) Completed the Construction of the headend(s) and all hubs and nodes and installed all necessary processing equipment;
 - (7) Completed any and all other Construction necessary for the System to be ready to deliver the OVS Services described in this Franchise Agreement to every residence located in the Phased Construction Area, a segment of the Phased Construction Area to which Franchisee desires to provide commercial Service, or the entire Franchise Area, in a manner meeting all technical performance standards, construction standards, electrical code standards, and other applicable standards and requirements described or referenced in this Franchise Agreement;
 - (8) After meeting all of the requirements described above in this Section, balanced the entire System that has been constructed up to that point in time, and conducted proof-of-performance tests and Signal leakage tests in accordance with Subsection I.C.2 and yielding results satisfying this said subsection;
 - (9) Marketed all categories of OVS Services described in this Franchise Agreement, except "non-mandatory categories of Service," in a comprehensive manner reasonably designed to inform the vast majority of potential Subscribers of the availability of these Services, and begun providing commercially such marketed Service to residents of the Phased Construction Area or the entire System. For purposes of this Franchise Agreement, a "non-mandatory category of Service" shall be any category of Service described in this Franchise Agreement whose description(s) contain(s) language explicitly acknowledging that, if Franchisee is offering a OVS Service or any other Service within the Franchise Area, the determination of whether said category of OVS Service is offered by Franchisee will rest within Franchisee's sole discretion; and
 - (10) With respect to Construction of the entire System, received the Certificate of Completion described in Section 4.2 of this Franchise Agreement;
2. With respect to subparagraph (8) of Subsection I.C.1, above, and the Construction Completion of any Phased Construction Area or the entire Franchise Area, Franchisee shall, within fourteen (14) days of said Construction completion, at a minimum of one (1) test point for each Phased Construction Area, or ten (10) widely separated test points when Franchisee deems that the entire OVS System has been constructed--unless a greater number of test points is mandated by FCC rules or regulations--including any headends or other Signal processing facilities serving City residents, conduct proof-of-performance tests and receive results at each such test point which satisfy performance standards adopted by the FCC or any other agency

having jurisdiction in this matter. Prior to activating Service in any newly constructed section of plant, Franchisee shall also carry out Signal leakage testing of the entire new plant section.

These proof-of-performance and signal leakage tests may be monitored by a representative of the City who, at the representative's option, will verify the conduct of the tests, the implementation of proper test methodologies, and the test results. Consequently, no less than ten (10) days prior to the anticipated date(s) of this proof-of-performance testing pertaining to a Phased Construction Area, Franchisee shall provide written notice to the Agency of the testing date(s) and time(s), so that the Agency may send a representative to monitor said testing.

No less than ten (10) days prior to the anticipated date(s) of the proof-of-performance testing pertaining to completion of Construction for the entire System, Franchisee shall provide written notice to the Agency of tentative testing dates, in order that Franchisee and the Agency may finalize these dates, in accordance with the reasonable availability of the City's representative.

Although the City will bear the cost of having a City representative monitor the initial set of proof-of-performance and Signal-leakage testing; in the event that this testing yields results not meeting applicable standards, Franchisee shall conduct appropriate retesting, as necessary, and reimburse the City for the costs of having a City representative monitor this retesting. This representative may be an independent professional engineer; independent member of the Society of Cable Telecommunications Engineers; or an independent Fellow, Institute for the Advancement of Engineering (FIAE).

In the event that Franchisee reimburses the City for monitoring retesting, as provided in the immediately preceding paragraph, said reimbursement shall not be categorized as a Franchise Fee payment, shall not be charged against Franchise Fees owed to the City, and shall constitute a "requirement or charge incidental to the awarding or enforcing of the Franchise," as defined in subparagraph 2(D) of Section 622(g) of the Communications Act (47 U.S.C. §542(g)). The maximum amount of actual cost reimbursement to the City shall be as follows: (i) for monitoring retesting of Phased Construction Area, up to \$1,500 for each day that the City representative works on the retesting monitoring project; and (ii) up to \$10,000 for monitoring retesting arising out of the claimed Completion of Construction of the entire System.

II. PHASED CONSTRUCTION OF THE OPEN VIDEO SYSTEM

A. Construction Schedule; Incentive for Early Construction Completion of the Open Video System

1. Franchisee agrees to Construct its Open Video System in a series of eight (8) "Phased Construction Area Segments" or "Segments" that will be Completed in annual increments over a period not to exceed eight (8) years. On average, each OVS System Segment will be designed by Franchisee to constitute approximately twelve percent (12%) of the total plant mileage of the Open Video System. City and Franchisee agree to an annual review to assure that cumulative construction percentages are being achieved. In recognition of start-up delays that Franchisee may encounter during the first year of the Franchise, Franchisee shall not be required to complete a Segment during that first year. However, Franchisee agrees that it will complete no less than two (2) Segments by the second anniversary date of the Effective Date. By the fourth anniversary date of the Effective Date, Franchisee shall complete no less than four (4) Segments. By the sixth anniversary date of the Effective Date, Franchisee shall complete no less than six (6) Segments. (A map of the Franchise Area is attached as Exhibit 1 to this Appendix B.)

However, the City Council desires to make available to City residents, at the earliest practicable date, the anticipated benefits to be derived from competitive video and telecommunications services. As an incentive to Franchisee to expedite the deployment of the OVS System throughout the Franchise Area, the City will extend the Franchise for an additional five-year term, as provided for in this Appendix B, if Franchisee completes construction of the System within sixty (60) months of the Effective Date. If the requirements for extension of the Franchise term are not satisfied by Franchisee, then the term of the Franchise will remain at ten (10) years.

To facilitate the achievement of the expedited System Construction, the parties will--24 months, 36 months, and 48 months after the Effective Date--prepare and submit to the City Council a report concerning the status of System Construction. Each of these status reports will contain information concerning the System mileage that has been constructed, the System mileage that remains to be constructed, whether accelerated deployment of the System is occurring, and the likelihood that the System will be completed in its entirety by the expedited time frame's deadline date. If the percentage completion of System mileage is then less than that which would be expected to ensure completion of Construction by the expedited deadline, then Franchisee must fully describe the reasons for that shortfall. Upon receipt and review of these reports by the City Council, such directives may be given to Franchisee as may be appropriate under the circumstances.

2. The five-year extension of the Franchise term is expressly conditioned upon Franchisee's satisfaction of the following requirements:

- (1) Construction of the System must be Complete, in accordance with the terms of Section I.C of Appendix B.
- (2) Franchisee must be in full compliance with all other terms and conditions of the Franchise.

B. Penalties for Failure to Timely Construct the OVS System

If Franchisee has not fully completed Construction of the Open Video System within ninety-six (96) months of the Effective Date, and the City does not attribute such noncompletion to "force majeure" or the City does not otherwise excuse this Construction noncompletion, the City may:

- (1) Impose a monetary penalty upon Franchisee in an amount up to \$1000 per day, every calendar day, during the period after the ninety-six (96) month Construction completion deadline during which full System Construction remains incomplete. The City may go against the security fund instruments described in Chapter 4 to collect all or any portion of these monetary penalties.
- (2) Revoke, terminate, or declare a forfeiture of the Franchise in accordance with the procedures specified in Chapter 13 of the Franchise Agreement.
- (3) Give such weight to noncompletion of the Open Video System as may, in the City's sole discretion, be appropriate in determining whether to renew the Franchise, if such renewal has been requested by Franchisee.

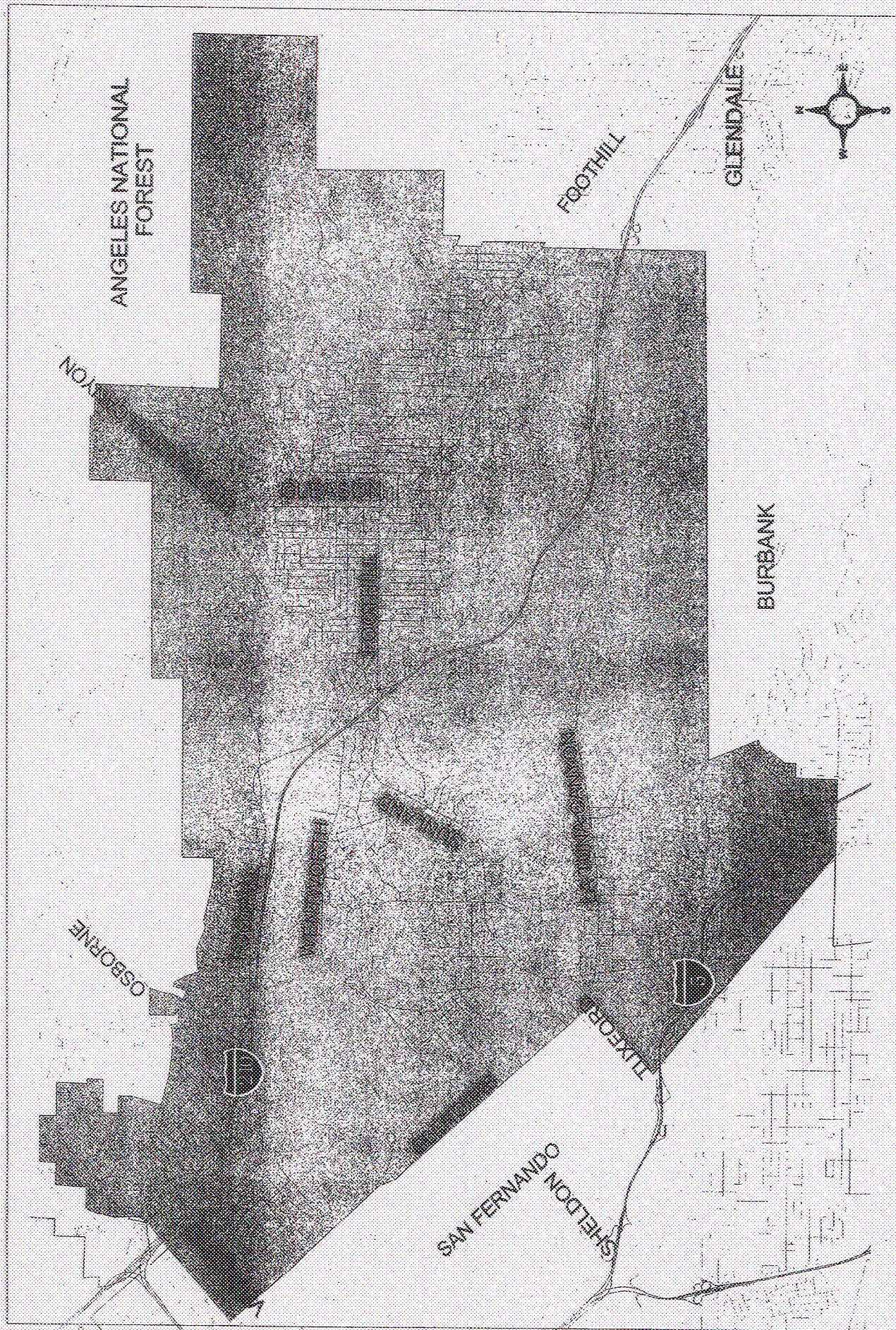
APPENDIX B

EXHIBIT 1

FRANCHISE AREA MAP

APPENDIX EXHIBIT 1

City of Los Angeles Open Video System Franchise Area D



**BUILD SCHEDULE FOR
FRANCHISE AREA E – SECTION 4.6**

1 be given by the Grantee to each subscriber in such area at
2 least 15 days prior thereto. If the Board shall find that
3 public convenience and necessity no longer requires that the
4 Grantee furnish such service, then the Board shall, after
5 public hearing as provided herein, authorize suspension or
6 abandonment on such reasonable terms and conditions as may be
7 prescribed by the Board.

8 Sec. 4.6 EQUIPMENT AND SERVICE REQUIREMENTS

9 (a) Technical Standards. The cable television
10 system authorized hereunder shall:

11 (1) Conform to the Class I Channel Technical
12 Standards set forth by the Federal Communications Commission as
13 the minimum requirements on all channels carried by the system.

14 (2) Conduct proof-of-performance tests in a
15 manner prescribed by the Board.

16 (b) Basic Services. The cable television system
17 authorized hereunder shall:

18 (1) Relay to subscriber terminals those
19 broadcast signals required by the Federal Communications
20 Commission;

21 (2) Distribute in color all television signals
22 which it receives in color;

23 (3) Have a minimum downstream capacity of 25
24 channels within 36 months of the effective date of this
25 ordinance. Failure to comply with this requirement will result
26 in an adjustment of the rates the Grantee may charge for
27 service;

28 (4) Provide a minimum of one combined access
29 channel initially and expand to a maximum of four access
30 channels, one channel each for municipal, educational, public
31 and leased access, as required by the Board;

32 (5) Have two-way capacity within 36 months of

1 the effective date of this franchise or at such time as may be
2 extended by the Board;

3 (6) Maintain and have available for public use
4 at least the minimal equipment and facilities necessary for the
5 production and programming of a public access channel. This
6 facility shall be located within the franchise area unless
7 otherwise authorized by the Board.

8 (c) Non-basic Services. The cable television system
9 authorized hereunder may:

10 (1) Transmit original cablecast programming not
11 received through television broadcast signals;

12 (2) Transmit television pictures, film and
13 video-tape programs, not received through broadcast television
14 signals, whether or not encoded or processed to permit
15 reception by only selected receivers or subscribers;

16 (3) Transmit any additional broadcast signals
17 permitted by the Federal Communications Commission;

18 (4) Transmit and receive all other signals;
19 digital, voice and audio-visual, etc.

20 (d) Municipal Services.

21 (1) With respect to local government access,
22 the Grantee shall provide, at the request of the Board and upon
23 City reimbursement of Grantee's actual cost, use of Grantee's
24 studio, equipment and technical services for production of live
25 and video-taped municipal programs, subject to scheduling
26 requirements of the Grantee;

27 (2) With respect to the basic television
28 service, the Grantee shall provide a drop and all subscriber
29 services, without cost, when the system passes such facilities
30 and as designated by the Board, to:

31 (i) public schools and community colleges
32 within the City, and

1 (ii) buildings owned and controlled by the
2 City, used for public purposes and not for residential use.

3 (e) Public Benefit Services. At such time as the
4 Board determines it to be in the public interest, the Grantee
5 may be required to provide:

6 (1) Viewing centers and/or communications
7 thereto;

8 (2) Connection to municipal access studios;

9 (3) Connection to education facilities;

10 (4) Connection to public health facilities;

11 (5) Interconnection with other communications
12 systems;

13 (6) Program origination, including children and
14 senior citizen programs.

15 (f) Interconnection. The Grantee will be required
16 to provide interconnection to City franchisees and other nearby
17 cable television systems at the time and to the extent and in
18 the manner specified by the Board, after the Board has
19 conducted public hearings on the matter to determine the need
20 and viability of an interconnect system.

21 (g) System Consolidation. The Grantee shall obtain
22 Board approval prior to the consolidation and/or elimination of
23 any headend.

24 Sec. 4.7 CUSTOMER SERVICE. Subject to such regulations
25 as may be adopted by the Board pursuant to Section 4.1 hereof,
26 the Grantee shall:

27 (a) Maintain a high standard of courtesy in customer
28 relations at all times;

29 (b) Maintain a log showing the date, approximate
30 time and duration, type and probable cause of all headend,
31 trunk or distribution line service failures due to causes other
32 than routine testing or maintenance; such log shall be subject

**BUILD SCHEDULE FOR
FRANCHISE AREA F**

APPENDIX BCONSTRUCTION/ACTIVATION PLANI. CONSTRUCTION TERMSA. Location of Cable

1. The Company shall install all cables in a manner consistent with existing telephone or public utility lines. Where both such lines or facilities are underground at a particular location (other than on private property), the Company shall install its cables underground, except as otherwise provided in Section 4 of this Franchise and Section 2 of this Appendix (B) or as otherwise approved by the agencies of the City having jurisdiction over such matters. Where either of such lines or facilities are above ground at a particular location, the Company may elect to install its cables above ground.
2. The Company shall use existing utility poles, ducts or conduits for the installation of cable, except as provided in the next paragraph.
3. Wherever existing telephone or public utility poles, ducts or conduits cannot accommodate the installation of the cable plant of the Franchisee or whenever the telephone or public utility company(ies) refuse to make available their existing facilities, or construct new facilities, for the installation of the cable plant of the Company, the Company may, consistent with Section 4.19 of this Agreement, install its own poles, ducts or conduits, as appropriate, provided that nothing herein shall be deemed to relieve said utility companies of their existing obligation to make available their poles, ducts, conduits, and other facilities for the installation of the System. For purposes of this subsection, the term "facilities" shall include, without limitation, facilities providing underground access from the main ducts into each block.
4. Identification of Poles
 - a. Poles set by the Franchisee shall be numbered immediately by the Franchisee. A record shall be maintained of the location, number, length and year of all poles upon installation, for the purpose of identification. Numbers shall be in a consecutive series and shall have distinguishing letters or initials to signify original ownership. The pole number is a permanent designation of the original ownership for a specific location and should remain with the pole until its removal from service. If the pole is replaced by

the original owner, the new pole should preferably retain the same number, but if desired, a new number may be assigned. When a number has been lost or destroyed, a duplicate number should be provided, but where this is impracticable, a new number shall be placed and recorded as appropriate.

- b. When the original owner is the relinquishing party in a two-party joint use, the pole shall be renumbered by the other owner; in multiparty joint use, one of the remaining owners as agreed upon shall renumber the pole for record purposes. Where the entire interest is purchased, the purchaser shall renumber the pole.
- c. The pole number should be placed between 12 ft. and 6 ft. above grade. On streets or alleys the number should preferably be placed on the side of the pole facing approaching traffic. On property lines or easements the number should be placed on the side of the pole facing the street used for location reference, which should correspond to the frontage of the lot on which the pole is located.
- d. The pole number may consist of an aluminum ribbon 1 1/8" wide and .02" thick, with raised letters 1/2" in height embossed on the plate with suitable die or any other suitable material. The plate shall be of length to suit requirements. 4d aluminum nails should preferably be used for fastening the number to the pole.
- e. Poles may be marked with standard nails to denote length and year set, and nails, if used, shall be placed on the pole immediately upon installation. Marking nails, if used, shall be placed immediately below the pole number, with the length nail on the left and the year nail on the right. The standard marking nail shall consist of a No. 3 (ASWG) wire nail, 2 1/4" long with figures 0.4".

B. Specific Terms

1. As provided in this Agreement, the Company shall comply with all applicable City laws, rules, regulations, codes, and other requirements in connection with the construction of the System.
2. The installation of all cables, wires, or other component parts of the System in any structure shall be undertaken in a manner which does not interfere with the operation of any existing MATV, SMATV, MDS, DBS, or other distribution system in said structure, including any conduit used in connection with any other system. For the purpose of routine maintenance, repair, connection, installation, or disconnection, all System wiring in any structure shall be accessible from a public hallway, roof, basement, stairwell, or other public area in said structure.

3. The Franchisee shall construct the System so as to meet the service obligations set forth in Section 5 of this Agreement. In the event that the Franchisee encounters extraordinary circumstances in connection with the construction or operation of the System, the Franchisee may, pursuant to Section 4.3 of this Agreement, apply to the Department for appropriate relief. To the extent possible, said relief shall be in the form of a temporary exception of the service obligation of the Franchisee until said circumstances cease. For purposes of this Section, "extraordinary circumstances" means that the Department has made a finding that, at a minimum, there exists:

- vacant or abandoned buildings;
- inability of the Franchisee to obtain access (physical or constructive) to a structure;
- situations which substantially and adversely affect the economic viability of the system; and
- such other conditions as the Department and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Department shall attempt, in any determination, to limit such relief to the smallest geographical unit practicable, consistent with the intent of this Section: (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any portion of the Franchise Area.

4. The terms "activation", "activated", etc., in connection with the Construction shall mean that strand has been put up, and all necessary cable (including trunk and feeder cable) has been lashed or, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored, and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplified housings and modules have been installed (including modules for return path signals if proposed); that power supplies have been installed, and all bonding and grounding have been completed; that all necessary connectors, splitters, and taps have been installed; that construction of the headends or hubs have been completed, and all necessary processing equipment has been installed; and that any and all other construction necessary for the System to be ready to deliver Cable Service to Subscribers has been completed. Balancing and initial testing shall have been conducted on each completed segment of the cable System before the direct marketing of such segment begins. It is expected that segments of less than the entire System will be activated, balanced and tested when completed. Construction of any segment or of the entire System will not be considered

finally complete until proof of performance tests have been conducted on such segment (or, in the case of the entire System, on all segments of the cable System) and any problems found during testing have been corrected. The term "activation" shall not include marketing and the installation of Subscriber Service.

C. Reconstruction Requirements

1. The Franchisee shall reconstruct or upgrade the System to be capable of sixty (60) activated channels before the end of year ten (10) of the Franchise, unless relieved of its obligation to do so by the City. In order to be relieved of this obligation, the Franchisee may petition the City by year eight (8) and present documentation substantiating that said upgrade is not warranted by community needs. Failure to upgrade as directed by this Franchise, unless granted relief from said obligation, shall constitute a material breach pursuant to Section 13 of this Franchise.
2. As part of the construction sequence plan required in Section II B hereof, the Franchisee shall prepare a cut over plan indicating the sequence in which subscribers will be disconnected from the old system plant and reconnected to the new system plant. The time subscribers are without service should be minimal. The Franchisee shall provide credit to any subscriber who is without service for more than one day of prime time viewing.

II. CONSTRUCTION SCHEDULE AND SEQUENCE

A. Construction Schedule

1. The Franchisee shall file a construction plan acceptable to the Department within 6 months from the effective date of the franchise, unless the filing date is extended by the Board which may be appealed to the Council. The plan shall delineate a schedule of the mileage and/or time frame for design, execution of pole attachment agreements, underground construction permits, make ready engineering, make ready construction, strand, underground conduit and cable installation, splicing and plant activation for the rebuild construction. For system upgrades, including converter change outs, similar information appropriate to the form of the upgrade shall be delineated.
2. Activation Milestones. The Franchisee shall develop an activation milestone schedule in quarter year increments based upon the construction plan required by the foregoing Section II.A.1. The initial version of the milestone schedule, and any modification to said initial milestone schedule shall, upon its approval by the Board, be set forth as Exhibit 1 to this Appendix B, which

Exhibit shall be incorporated herein and made a part of this Appendix B and the franchise Agreement. The Franchisee shall complete and activate the entire system throughout the Franchise Area by no later than the date specified in Exhibit 1.

3. Liquidated Damages. It would be impractical and extremely difficult to determine the damages which would be incurred by the general public residing in the Franchise Area by not having available the services proposed by the Construction of the System in accordance with the construction plan, activation milestone schedule and construction sequence plan required pursuant to Section 4.14 and Appendix B herein. Therefore, liquidated damages for failure to meet such accepted construction schedules shall accrue at the amount of \$500.00 per day, every calendar day, for each missed activation milestone and an additional \$1,000.00 per day, every calendar day, for delay beyond the final completion and activation date as indicated in Exhibit 1 to this Appendix B. Liquidated damages shall accrue irrespective of any modifications to the schedules in Exhibit 1 approved by the Board, unless the Board finds that such modifications are warranted as a result of force majeure or unreasonable delays caused by the Department of Water and Power, General Telephone Company or Pacific Telephone Company or other unforeseen or unavoidable factors that may arise that are beyond the control of the Company and which could not have been prevented. Determinations by the Board may be appealed to the Council.
4. Construction of the System shall be considered completed when the Company has notified the Department, in writing, that the Franchisee has (i) installed all cables and associated equipment and system devices, excluding converters, necessary for Subscribers to receive Services distributed over the System; (ii) passed all initial proof-of-performance tests, as provided in Appendix A to this Agreement; and (iii) commenced offering and distribution of the full range of Service throughout the Franchise Area. The temporary exception areas or other abatement of the Company's service obligations pursuant to Sections 4.3 and 5 of this Agreement shall not prevent the issuance by the Department of either of the foregoing written acknowledgements of completion and such acknowledgements may be issued subject to any such abatements. The plan shall consist of a map of the entire Franchise Area and shall clearly delineate the following:
 - (i) The areas within the Franchise Area where the cable system will be initially available to Subscribers, including a schedule of Construction as proposed; and
 - (ii) Areas within the Franchise Area where extensions of the cable System cannot reasonably be done due to the lack of present or planned development or other similar reasons, with the areas and the reasons for not serving them clearly identified on the map.

B. Construction Sequence

1. In addition to the construction plan and milestone schedule, the Franchisee shall file an acceptable construction sequence plan within 6 months of the effective date of this franchise. This plan shall delineate the sequence of the construction or upgrade within the Franchise Area. The sequence areas should be designated using street names as boundaries.
2. The Franchisee shall not materially deviate from the initial plan for the sequence of Construction without the prior approval of the Department provided that the Franchisee shall provide to the Department a written explanation and justification for deviations from the approved initial sequence plan.
3. The initial version of, and any modification to, the construction sequence plan shall, upon its approval by the Department, be set forth as Exhibit 2 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and this Agreement.
4. Actual physical Construction may not commence prior to the submission of the construction plan (II.A.1.), activation milestone schedule (II.A.2.) and construction sequence plan (II.B.1.).
5. Special agreements. Nothing in this section shall be construed to prevent the Franchisee from serving areas not covered by this section upon an agreement with developers, property owners, or residents.

TRB5/02

**BUILD SCHEDULE FOR
FRANCHISE AREA G**

APPENDIX B

CONSTRUCTION/ACTIVATION PLAN

I. CONSTRUCTION TERMS

A. Location of Cable

1. The Company shall install all cables in a manner consistent with existing telephone or public utility lines. Where both such lines or facilities are underground at a particular location (other than on private property), the Company shall install its cables underground, except as otherwise provided in Section 4 of this Franchise and Section 2 of this Appendix (B) or as otherwise approved by the agencies of the City having jurisdiction over such matters. Where either of such lines or facilities are above ground at a particular location, the Company may elect to install its cables above ground.
2. The Company shall use existing utility poles, ducts or conduits for the installation of cable, except as provided in the next paragraph.
3. Wherever existing telephone or public utility poles, ducts or conduits cannot accommodate the installation of the cable plant of the Franchisee or whenever the telephone or public utility company(ies) refuse to make available their existing facilities, or construct new facilities, for the installation of the cable plant of the Company, the Company may, consistent with Section 4.19 of this Agreement, install its own poles, ducts or conduits, as appropriate, provided that nothing herein shall be deemed to relieve said utility companies of their existing obligation to make available their poles, ducts, conduits, and other facilities for the installation of the System. For purposes of this subsection, the term "facilities" shall include, without limitation, facilities providing underground access from the main ducts into each block.
4. Identification of Poles
 - a. Poles set by the Franchisee shall be numbered immediately by the Franchisee. A record shall be maintained of the location, number, length and year of all poles upon installation, for the purpose of identification. Numbers shall be in a consecutive series and shall have distinguishing letters or initials to signify original ownership. The pole number is a permanent designation of the original ownership for a specific location and should remain with the pole until its removal from service. If the pole is replaced by the original owner, the new pole should preferably retain